IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1351 OF 1977

Ronuk Industries Ltd. .. Plaintiff

Vs.

Hirji Laxmidas & Ors. ..Defendants

Ms.Pratibha Mehta i/b Little and Co. for the plaintiff

None for the defendants

CORAM : S.U.KAMDAR, J
DATED : 19TH JANUARY, 2006

P.C.:

1. Pursuant to order dt.9.8.05 decree was passed in the present suit and matter was referred to Commissioner for Taking Accounts, High Court, Bombay. Commissioner has pursuant thereto given an opportunity to plaintiff to prove their claim for various payments made and after detailed examination has come to the conclusion that plaintiff have been able to establish payment of only Rs.63,000/- as against principal claim of the mortgage amount of Rs.2,50,000/-. Commissioner also gave an opportunity to the plaintiff to lead

oral evidence but plaintiff has chose not to lead oral evidence. I have perused the report of the Commissioner in detail. Commissioner has after considering the payments which are alleged by the plaintiff has come to the conclusion that except payment of Rs.63000 nothing has been proved.

2. The learned counsel for the plaintiff has contended before me that in para 12 of the written statement the defendants have admitted payment of Rs.67,500 and Rs.60,849. On perusal of the said averments in the written statement, I am of the opinion that the said payment is towards interest during the relevant period and cannot be given credit for in respect of payment of principal amount as claimed by the plaintiff. Thus, after taking into accounts all the payments proved there is due and payable towards the redemption of mortgage a sum of Rs.1,87,000 and interest thereon.

3. The learned counsel for the plaintiff states that they are not interested in making payment of the said amount as ascertained by the Commissioner for the purpose of redeeming the

contract. In the light of the aforesaid statement, prayer for redemption of mortgage cannot be granted since plaintiff has refused to make payment of balance debt due and payable as finally ascertained against the said mortgaged property. In that light of the matter, suit is dismissed. There shall be no order as to cost.